

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN R. CHERMOK)	
Claimant)	
VS.)	
)	
GAINEY TRANSPORTATION SERVICES)	Docket No. 180,669
Respondent)	
AND)	
)	
NATIONAL UNION FIRE INSURANCE COMPANY OF NEW YORK)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Alvin E. Witwer on March 18, 1996. The Appeals Board heard oral arguments on August 20, 1996, in Kansas City, Kansas.

APPEARANCES

Claimant appeared by his attorney, W. Fredrick Zimmerman of Kansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, J. Donald Lysaught, Jr. of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Eugene C. Riling of Lawrence, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record listed in the Award. The Appeals Board also adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded benefits based upon a 15 percent permanent partial general functional impairment. Claimant asks for a review of this finding and argues that he should be granted benefits for a higher work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board concludes that the Award by the Administrative Law Judge should be affirmed.

Claimant suffered injury arising out of and in the course of his employment while unloading boxed gas grills. A load became unbalanced and pinned claimant between cartons and the wall of the tractor-trailer. Claimant suffered headaches, dizziness, and neck injuries.

The parties stipulated that claimant's injury resulted in a functional impairment of 15 percent of the whole body. The Administrative Law Judge limited the award to the functional impairment on the basis of expert medical testimony indicating that claimant could return to his work as a truck driver and would thereby be able to earn a comparable wage. K.S.A. 44-510e, as amended. The Appeals Board agrees for the reasons well stated in the Award by the Administrative Law Judge which are hereby adopted as the findings and conclusions by the Appeals Board. The reasons include the testimony of Bernard M. Abrams, M.D., a neurologist hired by respondent, and testimony of the treating physician, John T. O'Mailey, M.D., both of whom testified that claimant's injuries would not prevent him from returning to his regular duties as a truck driver. Michael Dreiling, a vocational expert employed by claimant's counsel, acknowledged that claimant had a zero percent loss of access to the open labor market and zero percent loss of ability to earn a comparable wage based upon the opinions of the treating physicians. The Appeals Board, therefore, agrees with and affirms the finding by the Administrative Law Judge that claimant is entitled to benefits for a 15 percent functional impairment only and not entitled to disability.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Alvin E. Witwer dated March 18, 1996, should be, and hereby is, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant and against the respondent and its insurance carrier for an accidental injury which occurred May 27, 1993, and based upon an average weekly wage of \$567.06 for 5.86 weeks of temporary total disability compensation at the rate of \$299 per week or \$1,752.14, followed by 4 weeks of temporary partial compensation in the sum of \$120 per week in the sum of \$480, and 405.14 weeks at the rate of \$56.71 per week or \$22,975.49, for a 15% permanent partial general disability, making a total award of \$25,207.63.

As of November 30, 1996, there is due and owing claimant 5.86 weeks of temporary total disability compensation at the rate of \$299 per week or \$1,752.14, followed by 4 weeks of temporary partial compensation at the rate of \$120 per week or \$480 and 173.43 weeks of permanent partial compensation at the rate of \$56.71 per week in the sum of \$9,835.22 for a total of \$12,067.36, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$13,140.27 is to be paid for 231.71 weeks at the rate of \$56.71 per week, until fully paid or further order of the Director.

The Appeals Board adopts as its own all other orders and awards of benefits made in the Award by the Administrative Law Judge.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: W. Fredrick Zimmerman, Kansas City, KS
J. Donald Lysaught, Jr., Kansas City, KS
Eugene C. Riling, Lawrence, KS
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director